THE HON'BLE SRI. JUSTICE GODA RAGHURAM

W.P.No. 5576 of 2003

18-03-2006

Between:-

The Senior Divisional Manager, L.I.C. of India, Visakhapatnam Division Office, Visakhapatnam-4 and two others.

Petitioner

And

The Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, rep., by its Presiding Officer and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.5576 of 2003

Oral order:

This writ petition is filed assailing the Award dated 30-11-2002 in L.C.I.D.No. 08 of 2002 on the file of learned Central Government Industrial Tribunal-cum-Labour Court, Hyderabad by the respondents in the industrial dispute.

The facts in brief are that the 2nd respondent filed a dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') alleging that he was appointed as a Sub-staff to perform a variety of jobs like Watchman, Lift Operator or Water Boy on temporary basis on a daily wage at the rate of Rs.9-00 per day in the month of April, 1981 in the petitioners-Organization and worked as such up to 20-04-1983. A criminal case was registered against the 2n d respondent on 20-04-1983 for the offences under Sections 468, 471, 474 and 420 of the Indian Penal Code. He was arrested and released him on bail. The 2nd respondent was however not permitted to

work. By the judgment dated 07-09-1992 in C.C.No. 442 of 1989, the 2nd respondent and others were acquitted of the offences they were charged of. The 2nd respondent made a representation to the petitioners on 20-10-1992 to consider his case in the light of his acquittal in the criminal case. The 2nd respondent made further representations on 23-10-1992; 16-12-1992 and 19-01-1993, but no action was taken. As no action was taken, on 30-03-1993 the 2nd respondent filed a writ petition and by the order dated 16-11-1995, this court granted interim orders directing the petitioners to consider the representations of the 2nd respondent and pass appropriate orders in accordance with law. Consequently, the 2nd respondent was given temporary appointment on 07-05-1996. Thereafter, by the order dated 16-08-1996 the writ petition was dismissed on the ground of inordinate delay. Pursuant to the dismissal of the writ petition, the services of the 2nd respondent were terminated on 03-09-1996.

Thereupon the 2nd respondent filed LCID No.8/02 before the Central Government Industrial Tribunal – Labour Court, Hyderabad, u/Sec. 2A(2) of the Industrial Disputes Act, 1947 ('the Act') seeking a direction to the writ petitioner for his appointment as Sub Staff or a Water Boy on a temporary basis with back wages and costs, and for his absorption as a Government employee. By the award impugned in this writ petition the Tribunal directed the petitioner to appoint the 2nd respondent as a Water Boy whenever there is a vacancy in the 1st respondent's office considering the 2nd respondent's seniority from 1981 and further directed that for any future temporary appointment the 2nd respondent shall be given preference over the others by considering his date of appointment as April 1981 and giving him relaxation in age. Aggrieved thereby the employer is before this court.

The Tribunal, on an analysis of the oral and documentary evidence recorded a finding that the 2nd respondent worked in several odd jobs including as a Water Boy during April 1981 and April 1983; he was thereafter not employed on account of his prosecution for several offences in CC No. 442/89 before the V Metropolitan Magistrate, Visakhapatnam. The 2nd respondent was acquitted in September 1992 and thereafter started representing to the petitioner for employment from October 1992. Questioning his discharge he filed a writ petition in 1993 before this court. The writ petition was dismissed on 16.8.1996 on the ground of latches in instituting the

writ petition.

After recording the above factual conclusions the Tribunal by the order impugned recorded the following conclusions for passing the award:

> *"24. Some times some things happen which are beyond the control of anybody. Here whatever the truth or otherwise he was involved in criminal case. Having worked as water boy from 1981 to 1983 now after the close of almost two decades he still says he is jobless and wants job. The very fact that during the pendency of the writ petition he worked as water boy. And petitioner is now aged almost 39 years and anyway in spite of the acquittal there is some stigma attached to him. However, taking the chequered history of the case into account and sympathetic approach, the only relief under the circumstances that can be given to the petitioner is he shall be appointed as a water boy whenever there is a vacancy in Respondent number one's office taking his seniority as 1981 and any future temporary appointment he shall be given preference over others as stated supra taking his date of appointment as April, 1981 giving him relaxation in age."*

In the considered view of this court, given the chronology of facts narrated above, the judgment of this court dt 16.8.1996 dismissing the W.P. No. 3962/93 constitute *res judicata* which disentitles the 2nd respondent to claim invalidation of his alleged termination of service by the writ petitioner. As the writ petition was dismissed on the ground of latches he could not have maintained an Industrial Dispute for the same cause of action. Be that as it may. The Tribunal did not record any finding as to whether the 2nd respondent was removed or retrenched from service by the petitioner, and whether such disengagement/retrenchment/removal was illegal and therefore the 2nd respondent was entitled to any relief u/Sec.2A(2) of the Act. The jurisdiction of the Labour Court/Industrial Tribunal u/Sec.2A(2) of the Act comes into play only when there is an illegal termination from service. Disputes such as whether the petitioner was entitled to a preferential consideration for subsequent casual employment on account of his nearly 2 years service during April 1982 to April 1983 or a sympathetic consideration that he is unemployed though almost 39 years of age, are all extraneous to the exercise of jurisdiction of the Industrial Tribunal u/Sec. 2A(2) of the Act. In view of the patent lack of jurisdiction of the Tribunal, the award cannot be sustained. It is therefore set aside.

The writ petition is accordingly allowed, but in the circumstances without costs.

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GODA RAGHURAM, J

Dated:18-03-2006

Pvks/*